

BY MAIL AND E-MAIL

March 5, 2004

Luly Massaro, Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Docket 3550 – DPUC Implementation of Federal Communications  
Commission’s Triennial Review Order; Comments of DSCI and  
InfoHighway on the Emergency Motion of Verizon Rhode Island for  
Stay of the Proceeding

Dear Ms. Massaro:

DSCI and InfoHighway (the “Carriers”) hereby oppose and submit the following comments on the Emergency Motion for Stay (“Motion”) submitted by Verizon Rhode Island (“Verizon”). In its Motion, Verizon seeks an immediate stay of the Commission’s proceeding implementing the Federal Communications Commission’s (“FCC”) Triennial Review Order (“TRO”) in light of the decision issued by the United States Court of Appeals for the District of Columbia (“DC Circuit”).<sup>1</sup> The Carriers oppose Verizon’s motion on the following grounds.

Verizon’s Motion is premature and should be rejected. The *USTA II* decision, which Verizon cites in urging the Commission to take the step of “immediately” staying further proceedings in this docket, will not be effective for at least 60 days, and may not ever be put into effect if a stay is issued.<sup>2</sup> Indeed, the FCC and several other parties have indicated their intent to seek a stay of the DC Circuit’s decision from the United States Supreme Court. Moreover, the DC Circuit recognized that the FCC may very well rely upon facts and information gathered by State Commissions in resolving unbundling issues, and therefore the record of this proceeding will provide a useful tool to the FCC in examining the actual state of impairment in Rhode Island in the further proceedings

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<sup>1</sup> See United States Telecom Association v. Federal Communications Commission (Docket No. 00-1012) (DC Circuit March 2, 2004) (“*USTA II*”).

<sup>2</sup> Id., at 62 (noting that the portions of the TRO vacated by the DC Circuit will be stayed until “no later than the later of (1) the denial of any petition for rehearing or rehearing *en banc* or (2) 60 days from today’s date”).

resulting from the *USTA II* decision. The Commission and the active parties have already completed much of the fact-finding necessary to resolve the issues set forth in the TRO. Discovery is near completion and multiple rounds of testimony have been submitted. Therefore, the Commission, like state commissions in New York, Connecticut, Georgia and Oklahoma, should adhere to its schedule and complete the fact-finding portion of this proceeding.

While the Carriers urge the Commission to deny Verizon's Motion and go forward with its proceeding, to the extent that the Commission grants the Verizon Motion, the Commission should, at a minimum, adopt measures that will ensure that the extensive written record already developed in this proceeding will be available to the FCC if necessary, or alternatively, allow the Commission to resume the proceeding at the appropriate time. Specifically, the Carriers urge the Commission to take the following steps: (1) require all parties to stipulate to the admission of all discovery responses, pre-filed testimony and associated exhibits into the record of the proceeding; (2) enter into the record of this proceeding all discovery responses, and all pre-filed testimony and associated exhibits filed by the parties; (3) permit parties the right to cross examine witnesses if/when the proceeding recommences; (4) hold the proceeding in abeyance, pending the outcome of the various appeals of the DC Circuit decision and any FCC action; and (5) schedule a status conference for 30 days after the issuance of its order holding the proceeding in abeyance to assess the status of the TRO.

The Carriers, subject to review of the specific terms, supports Verizon's offer to voluntarily forebear seeking relief from the FCC in the event this proceeding is not completed by the Commission by July 2, 2004, the nine month deadline established in the TRO for completing state impairment proceedings. The extensive record compiled by the Commission in this proceeding will be critical to resolution of the issues raised by the DC Circuit and necessary to ensure that a framework for competition exists in Rhode Island.

The original and nine (9) copies of this letter are enclosed.

Respectfully submitted,

Robert J. Munnely, Jr.  
Admitted *pro hac vice*

cc: Service List (by mail and e-mail)